IN THE HIGH COURT OF BOMBAY AT GOA

COMPANY APPLICATION NO.87-0 OF 2001
IN
COMP. PETITION NO.7/B/1998

Official Liquidator,
High Court of Bombay,
Panaji. ... Applicant.

V/s.

1. Peter M. Ferrao,
House No.623, St. Anthony's
Waddo, Guirim, Bardez, Goa.

2. Franklin A. Ferrao,
St. Anthony's Waddo,
Guirim, Bardez, Goa.

3. Joaquim C. Lawrencio,
Design. 705, Dept. 35,
Empl. No.03128,
Sesa Goa Ltd., Panaji, Goa. .... Respondents.

Ms. Amira Razak, Advocate for the applicant.

Mr. J. Godinho, Advocate for the respondents.

CORAM : P.V. HARDAS, J.

DATE : 21ST MARCH, 2003.

ORAL ORDER :

This is an application filed by the applicant, claiming an amount of Rs.4,34,433/- together with future interest at the rate of 20 % per annum from the date of filing of the claim, till realisation of this amount from the respondents. The following issues have been framed :

(1) Whether the Official Liquidator proves that the respondent No.1 had availed of a total

loan of Rs.1,93,200/- by his agreement for loan dated 13.02.1995 from the Company (in liquidation) @ 20 % per annum with penal interest of 50 % in case of default ?

(2) Whether the Official Liquidator proves that the outstanding loan amount as per the records of the Company (in liquidation) in his custody is Rs.3,32,558/- and the Respondent No.1 is liable along with the respondents No.2 and 3 for repayment of the same along with interest @ 20 % per annum from 01/01/1999 and penal interest is levied due to default of the respondents ?

2. The applicant in support of its claim has examined Mr. Rajendra Prasad, son of Bawani Dutta as AW.1. He is an official attached to the Office of the Official Liquidator and has produced the record. The execution of the various documents produced by AW.1 has not been denied by respondent No.1. Exhibit AW.1/1 is the loan application dated 22.5.1995. In consideration of the said loan application, the amount of loan was disbursed to respondent No.1, who had signed, executed and delivered an agreement for loan. The said Agreement for Loan is at Exhibit AW.1/2. Respondent No.1 had agreed to repay the loan in 36 monthly instalments of Rs.8,700/- each. The agreed rate of interest was 20 % or such other rate as may, from time to time, be fixed by the Company, under liquidation. Respondent No.1 had also agreed that in the event of failure to pay any instalment, the entire amount of loan should be recalled at the discretion of the Company under liquidation. In token of having received the aforesaid amount,

respondent No.1 has executed a Demand Promissory Note dated 30.2.1995 which is at Exhibit AW.1/3. Respondent No.1 has also executed a declaration which is signed by respondents No.2 and 3 as guarantors towards the receipt of the loan amount of Rs.1,93,200/-, which is at Exhibit AW.1/4. Exhibit AW.1/5 is a letter addressed by Shri D.H. Kudav, Executive Director of the Company under liquidation, addressed to the employer of respondent No.3. Since respondent No.1 was irregular in payment of the instalments, the Loans Officer of the Company under Liquidation, addressed a letter, dated 27.3.1998 to respondent No.1. The said letter is at Exhibit AW.1/6. Similarly, the letters regarding failure to pay the instalment were communicated to respondent No.1 by the Loans Officer by letters dated 31.10.1996, and 11.1.1997, which are at Exhibits AW.1/7 and AW.1/8 respectively. Exhibit AW.1/9 is the acknowledgement. The Loans Officer had also addressed a registered A/D. letter dated 23.5.1997 to respondent No.1, calling upon him to regularise the loan account on or before 31.5.1997. The said letter is at Exhibit AW.1/10 and the Postal acknowledgement receipt is at Exhibit AW.1/11. By letter at Exhibit AW.1/12 dated 18.7.1996, the Loans Officer of the Company under liquidation had requested respondent No.1 to attend the office of the Company under liquidation on 25.7.1996. The letter at Exhibit AW.1/13 is again a letter addressed to the

respondents asking him to regularise the loan account. Exhibit AW.1/16 is the Loan Ledger.

3. The applicant has also examined Mr. Devidas Harischandra Kudav as AW.2, who, at the relevant time was a whole-time Director of the Company under liquidation. AW.2 in his examination-in-chief has made a reference to the various letters issued by the company under liquidation and the documents executed by respondent No.1.

4. The respondent No.1 has examined himself as RW.1. Respondent No.1 has admitted that he had obtained loan of Rs.1,55,000/- from the Company under liquidation for purchasing a second hand bus. He further states that he had agreed to pay the interest at the rate of 20 % per annum, with penal interest of 50% in case of default. Thus, Issue No.1 is answered in the affirmative.

5. In respect of Issue No.2, the applicant has placed on record the evidence of its witnesses and has also produced Loan Ledger. The evidence and the documents on record, clearly establish that the amount outstanding against the respondents was Rs.3,32,558/- as on 13.10.1998. Thus, the applicant has been able to establish that the applicant is entitled to claim an

amount of Rs.4,34,433/- together with future interest at the rate of 20 % per annum from the date of decree till realisation.

6. There is nothing in the evidence of respondent No.1 to discredit the claim of the applicant which is based on oral evidence, corroborated by documents on record. In such circumstances, the decree for Rs.4,34,433/- together with future interest at the rate of 20 % per annum from the date of claim, till realisation of the said amount from the respondents is passed with costs of Rs.25,000/-. Decree be drawn up accordingly. The application allowed.

P.V. HARDAS, J.

ssm.